(2)

No. 00-1181

Supreme Court, U.S.
FILED
FEB 7 2001
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF ARIZONA,
PETITIONER,

-vs-

BRUCE LEWIS HOWELL,
RESPONDENTS.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

JANET NAPOLITANO
ATTORNEY GENERAL

RANDALL M. HOWE
CHIEF COUNSEL
CRIMINAL APPEALS SECTION

GINGER JARVIS
ASSISTANT ATTORNEY GENERAL
(COUNSEL OF RECORD)
1275 WEST WASHINGTON
PHOENIX, ARIZONA 85007-2997
TELEPHONE: (602) 542-4686

ATTORNEYS FOR RESPONDENTS

4 PP

SUPPLEMENTAL STATEMENT OF THE CASE

On December 28, 2000, Petitioner filed a Petition for Writ of Certiorari in this matter. Pursuant to Rule 15.8 of the United States Supreme Court Rules, Petitioner now submits this Supplement to the Petition for Writ of Certiorari.

REASONS WHY THE PETITION WAS TIMELY

On January 23, 2001, this Court noticed by letter that Petitioner's Petition for Writ of Certiorari was considered untimely based on the date listed within the body of the Arizona Supreme Court's denial of the State of Arizona's petition for review, which refers to the date the court met in conference on the matter—September 26, 2000. However, the order denying the petition for review did not issue until September 29, 2000. Unfortunately, that date, which appears at the top of the order, was inadvertently deleted from the Arizona Supreme Court order when it was retyped as Appendix B. The date the order issued, September 29, 2000, is the date from which the 90-day time period in which a Petition for Writ of Certiorari may be filed is calculated because that is the date of the order denying discretionary review. *See* United States Supreme Court Rule 13.1. Therefore, Petitioner's Petition for Writ of Certiorari, which was postmarked December 28, 2000, is timely. A corrected copy of the Arizona Supreme Court's order is attached as Appendix A. A copy of the original was faxed directly to this Court on February 1, 2001.

Alternatively, 28 U.S.C. 2101(d) provides that the time for applying for a writ of certiorari to review a judgment of a state court in a criminal case is prescribed by rules of the Supreme Court. Unlike civil cases, which this Court has held that compliance with the 90-day period is both "mandatory and jurisdictional" and not capable of being extended by the court "except as Congress permits" (*see Missouri v. Jenkins*, 495 U.S. 33, 45 (1990)), in criminal cases, the time for filing a petition for certiorari has long been prescribed by Supreme Court rules. *See Schacht v. United States*, 398 U.S. 58, 63–64 (1970). Therefore, if this Court disagrees with Petitioner's

calculation of time from the date of the order, the time is not a jurisdictional defect in this criminal case, and Petitioner respectfully requests that this Court consider the merits of the petition.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court consider the petition for writ of certiorari as timely filed and address it on the merits.

Respectfully submitted,

JANET NAPOLITANO
Attorney General

RANDALL M. HOWE
Chief Counsel
Criminal Appeals Section

GINGER JARVIS
Assistant Attorney General
(Counsel of Record)

Attorneys for RESPONDENTS

CRMCRM98-1607
105571

APPENDIX A

SUPREME COURT OF ARIZONA

STATE OF ARIZONA
NOEL K. DESSAINT
CLERK OF THE COURT
402 ARIZONA STATE COURTS BUILDING
PHOENIX, ARIZONA 85007-3231
KATHLEEN K. KEMPLEY
CHIEF DEPUTY CLERK

TELEPHONE (602(542-9396

September 29, 2000

RE: **STATE OF ARIZONA vs. BRUCE LEWIS HOWELL**
Arizona Supreme Court No. CR-00-0236-PR
Court of Appeals Division One NO. 1 CA-CR 98-0886
Maricopa County Superior Court No. CR 97-03949

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on September 26, 2000, in regard to the above-referenced cause.

ORDERED: The State of Arizona's Petition for Review = DENIED.

Record returned to the Court of Appeals, Division One, Phoenix, this 29th day of September, 2000.

Record returned the Court of Appeals, Division One, Phoenix, this 29th day of September, 2000.

Noel K. Dessaint, Clerk

TO:
Hon. Janet A. Napolitano, Esq., Arizona Attorney General
Attn: Paul J. McMurdie, Esq., and Ginger Jarvis, Esq.
Richard M. Romley, Esq., Maricopa County Attorney
Attn: Robert J. Shutts, Esq.
Richard L. Parrish, Esq., Kimerer & LaVelle PLC, Tucson office
West Publishng Company, Editorial Department D4-40
Lexis-Nexis
Glen D. Clark, Clerk, Court of Appeals, Division One, Phoenix